

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Frederick A. Lorig (Bar No. 057645)

fredlorig@quinnemanuel.com

Kevin Y. Teruya (Bar No. 235916)

kevinteruya@quinnemanuel.com

Adam B. Wolfson (Bar No. 262125)

adamwolfson@quinnemanuel.com

865 South Figueroa Street, 10th Floor

Los Angeles, California 90017-2543

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

Attorneys for Complete
Entertainment Resources LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Complete Entertainment Resources
LLC d/b/a Songkick,

Plaintiff,

v.

Live Nation Entertainment, Inc.;
Ticketmaster LLC,

Defendants.

Ticketmaster LLC,

Counter Claimant,

v.

Complete Entertainment Resources
LLC d/b/a Songkick,

Counter Defendant.

CASE NO. 15-cv-9814 DSF (AGRx)

**PLAINTIFF'S APPLICATION TO
FILE UNDER SEAL CERTAIN
DOCUMENTS IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Complaint Filed: December 22, 2015

Judge: Hon. Dale. S. Fischer
Date: August 7, 2016
Time: 1:30 p.m.
Crtrm.: 7D

Motion Hearing Cut-Off: Aug 7, 2017
Pre-Trial Conference: October 16, 2017
Trial Date: November 14, 2017

1 Pursuant to Local Rule 79-5, this Court's Individual Procedures, and the
2 Stipulated Protective Order entered in this case on February 12, 2016, ECF No. 22
3 ("Protective Order"), Plaintiff Complete Entertainment Resources LLC
4 ("Songkick") hereby applies to file the following documents under seal.

5 **I. DOCUMENTS PRODUCED BY DEFENDANTS OR THIRD PARTIES**
6 **THAT SONGKICK CONDITIONALLY FILED UNDER SEAL**

7 **A. Defendants' Documents**

8 1. With this Application, Songkick conditionally filed under seal the
9 following documents designated "Confidential" or "Highly Confidential" by
10 Defendants pursuant to the Protective Order:

11 2. Exhibits 78, and 200 through 382, and 414 through 418, and 427
12 through 429, to the concurrently-filed Declaration of Adam Wolfson ("Wolfson
13 Declaration"); these exhibits are documents produced by Defendants and designated
14 as either "Confidential" or "Highly Confidential."

15 3. Exhibits 5, 9, and 43 to the Wolfson Declaration; these exhibits are
16 written discovery responses served by Defendants on Songkick and designated by
17 Defendants as either "Confidential" or "Highly Confidential."

18 4. Exhibits 1, 393, 395, 397, 398, 401, 402, and 405 to the Wolfson
19 Declaration; these exhibits are excerpts from the deposition transcripts of
20 Defendants' fact and expert witnesses in this action that Defendants have designated
21 as either "Confidential" or "Highly Confidential."

22 5. Exhibits 389, 390 and 403 to the Wolfson Declaration; these exhibits
23 are excerpts from the deposition transcripts of third party witnesses who are former
24 employees of Defendants, and that may, accordingly, describe or reference
25 information that Defendants might deem confidential.

26 6. Exhibits 44, 46, and 76 to the Wolfson Declaration; these exhibits are
27 expert reports and/or excerpts of expert reports served by Defendants in this action,
28 and have been designated "Highly Confidential" by Defendants.

1 7. Exhibits 12, 38, 42, 45, and 75 to the Wolfson Declaration; these
2 exhibits are expert reports served by Songkick in this action that quote from material
3 designated “Confidential” and/or “Highly Confidential” by Defendants.

4 8. Portions of the Memorandum of Points and Authorities in Support of
5 Plaintiff’s Opposition to Defendants’ Motion for Partial Summary Judgment, which
6 quotes, describes, or references documents designated by Defendants as
7 “Confidential” or “Highly Confidential.”

8 9. An unredacted version of the Statement of Genuine Disputes and
9 Additional Material Facts in Support of Plaintiff’s Opposition to Defendants’
10 Motion for Partial Summary Judgment, which quotes, describes, and references
11 documents designated by documents designated by Defendants as “Confidential” or
12 “Highly Confidential.”

13 10. An unredacted version of the Declaration of Adam Wolfson (“Wolfson
14 Declaration”) in Support of Plaintiff’s Opposition to Defendants’ Motion for Partial
15 Summary Judgment, which quotes, describes, or references documents designated
16 by Defendants as “Confidential” or “Highly Confidential.”

17 11. On June 25, 2017, Songkick provided notice to Defendants via email
18 that they intended to file materials designated by Defendants as “Confidential” or
19 “Highly Confidential.” *See* C. Waduge Decl. in Supp. of Pls.’ App. for Leave to
20 Seal ¶ 3, June 26, 2017 (“Waduge Decl.”). Defendants’ counsel did not respond. *Id.*
21 These materials are listed above, along with a small number of additional documents
22 that were not specifically enumerated in Songkick’s June 25 email. Pursuant to
23 Paragraph 12 of the Protective Order, Songkick is required to—and hereby does—
24 file this “Confidential” and “Highly Confidential” information conditionally under
25 seal.

B. Access Industries Documents

12. With this Application, Songkick conditionally filed under seal the following documents designated “Confidential” or “Highly Confidential” by third party Access Industries (“Access”) pursuant to the Protective Order:

13. Exhibits 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 406 to the concurrently-filed Declaration of Adam Wolfson (“Wolfson Declaration”); these exhibits are documents produced by Access and designated as either “Confidential” or “Highly Confidential.”

14. Exhibits 396 to the Wolfson Declaration; this exhibit excerpts from the deposition transcript of Access’ witness in this action that has been designated as either “Confidential” or “Highly Confidential.”

15. Portions of the Memorandum of Points and Authorities in Support of Plaintiff’s Opposition to Defendants’ Motion for Partial Summary Judgment, which quotes, describes, or references documents designated by Access as “Confidential” or “Highly Confidential.”

16. An unredacted version of the Statement of Genuine Disputes and Additional Material Facts in Support of Plaintiff’s Opposition to Defendants’ Motion for Partial Summary Judgment, which quotes, describes, and references documents designated by documents designated by Access as “Confidential” or “Highly Confidential.”

17. Pursuant to Paragraph 12 of the Protective Order, Songkick is required to—and hereby does—file this “Confidential” and “Highly Confidential” information conditionally under seal.

C. Sequoia Capital Document

18. With this Application, Songkick conditionally filed under seal the following documents designated “Highly Confidential” by third party Sequoia Capital (“Sequoia”) pursuant to the Protective Order:

1 19. Exhibit 80 to the concurrently-filed Declaration of Adam Wolfson
2 (“Wolfson Declaration”); this exhibit is a document produced by Sequoia and
3 designated as “Highly Confidential.”

4 20. Portions of the Memorandum of Points and Authorities in Support of
5 Plaintiff’s Opposition to Defendants’ Motion for Partial Summary Judgment, which
6 quotes, describes, or references documents designated by Sequoia as or “Highly
7 Confidential.”

8 21. An unredacted version of the Statement of Genuine Disputes and
9 Additional Material Facts in Support of Plaintiff’s Opposition to Defendants’
10 Motion for Partial Summary Judgment, which quotes, describes, and references
11 documents designated by documents designated by Sequoia as “Highly
12 Confidential.”

13 22. Pursuant to Paragraph 12 of the Protective Order, Songkick is required
14 to—and hereby does—file this “Highly Confidential” information conditionally
15 under seal.

16 **D. SCIT Document**

17 23. With this Application, Songkick conditionally filed under seal the
18 following documents designated “Highly Confidential” by third party String Cheese
19 Incident Ticketing, LLC (“SCIT”) pursuant to the Protective Order:

20 24. Exhibit 79 to the concurrently-filed Declaration of Adam Wolfson
21 (“Wolfson Declaration”); this exhibit is a document produced by SCIT and
22 designated as “Confidential.”

23 25. Portions of the Memorandum of Points and Authorities in Support of
24 Plaintiff’s Opposition to Defendants’ Motion for Partial Summary Judgment, which
25 quotes, describes, or references documents designated by SCIT as or “Confidential.”

26 26. An unredacted version of the Statement of Genuine Disputes and
27 Additional Material Facts in Support of Plaintiff’s Opposition to Defendants’
28

1 Motion for Partial Summary Judgment, which quotes, describes, and references
2 documents designated by documents designated by SCIT as “Confidential.”

3 27. Pursuant to Paragraph 12 of the Protective Order, Songkick is required
4 to—and hereby does—file this “Confidential” information conditionally under seal.

5 **II. SONGKICK’S APPLICATION TO SEAL DOCUMENTS**

6 28. Songkick’s Application is made on grounds that:

7 29. Songkick seeks to seal only a fraction of the material submitted in
8 conjunction with Plaintiff’s Opposition to Defendants’ Motion for Partial Summary
9 Judgment. Of the documents submitted in conjunction with Plaintiff’s motion,
10 Plaintiff respectfully request that the Court seal only documents containing certain
11 trade secrets and/or other highly confidential and sensitive business information.
12 These documents include confidential information concerning, for example: (a)
13 Plaintiff’s forward-looking business strategy, (b) Plaintiff’s strategies to develop and
14 maintain business relationships with clients, (c) information concerning unreleased,
15 non-public products and services developed by Plaintiffs. Plaintiff also seeks to
16 redact portions of documents that reference these materials, as well as the names and
17 email addresses of third party artists and artist representatives that are not parties to
18 this litigation.

19 30. The purpose of Plaintiff’s request is to protect trade secrets and other
20 “privacy interests of litigants and third parties”—i.e., precisely the considerations
21 that courts have long recognized warrant preventing public disclosure of sensitive
22 material. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984).

23 31. In the Ninth Circuit, “compelling reasons must be shown to seal
24 judicial records attached to a dispositive motion.” *Kamakana v. City & County of*
25 *Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). “In general, ‘compelling reasons’
26 sufficient to outweigh the public’s interest in disclosure and justify sealing court
27 records exist when such court files might have become a vehicle for improper
28 purposes, such as the ... release [of] trade secrets.” *Id.* at 1179 (internal quotation

marks omitted). More broadly, as the U.S. Supreme Court has recognized, “courts have refused to permit their files to serve as ... sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). Courts thus routinely hold that documents “contain[ing] confidential business information and/or trade secrets ... [are] properly sealable.” *See, e.g., Synopsis, Inc. v. Magma Design Automation, Inc.*, 2006 WL 997190, at *1-3 (N.D. Cal. April 17, 2006). For example, “pricing terms, royalty rates, and guaranteed minimum payment terms . . . [are] information that plainly falls within the definition of ‘trade secrets,’” and therefore meet the “compelling reasons” standard. *In re Elec. Arts Inc.*, 298 Fed. Appx. 568, 569-70 (9th Cir. 2008) (ruling that a district court erred in refusing to seal a licensing agreement under the compelling reasons standard). But importantly, sealing sensitive commercial material is not limited to “trade secrets.” To the contrary, since *Nixon*, “documents may be sealed merely if they are ‘sources of business information that might harm a litigant’s competitive standing.’” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1225 n.3 (Fed. Cir. 2013) (applying Ninth Circuit law); *Ovonic Battery Co., Inc. v. Sanyo Elec. Co., Ltd.*, 2014 WL 2758756, at *2 (N.D. Cal. June 17, 2014) (citing *Apple*, 727 F.3d at 1226).

32. Further, courts routinely permit the sealing of the names and personal identifying information of third parties under the compelling reasons standard. *See, e.g., Myles v. Cty. of San Diego*, 2017 WL 274829, at *2 (S.D. Cal. Jan. 19, 2017) (ordering redaction of “third parties’ names and personal identifying information” under “compelling reasons” standard); *PNY Techs., Inc. v. Sandisk Corp.*, 2014 WL 661620, at *2 (N.D. Cal. Feb. 20, 2014) (permitting redaction of “the names and other discrete identifying information of third parties” under “compelling reasons” standard).

33. This Court has previously granted the parties’ applications to seal similar types of documents and information under the “compelling reasons”

1 standard—including highly confidential and sensitive business information. Order re
 2 App. to Seal (Dkt. Nos. 36, 44), ECF No. 53. As explained below, the documents
 3 and information that Plaintiff seeks to seal in this application are no different.
 4 Plaintiff therefore respectfully requests that the Court grant this Application.

5 **B. Exhibits to the Wolfson Declaration**

6 **1. *Documents that Reflect Songkick's Strategy and Business***
7 *Policy, Trade Secrets and Financial Data*

8 34. Exhibits 17, 102, 110, 111, 118, 123, 126, 131, 132, 134, 135, 144,
 9 147, 148, 157, 165, 168, 169, 188, 191, and 195 contain certain sensitive
 10 information regarding: (a) the relationship between Songkick and specific artists, (b)
 11 Songkick's forward-looking business strategy and business policies, (c) Songkick'
 12 strategic decision-making, (d) Songkick's trade secrets and the development and
 13 protection of those trade secrets, and (e) specific artists' communications and
 14 arrangements with Songkick.

15 **2. *Expert Reports that Reflect Songkick's Strategy and***
16 *Business Policy, Trade Secrets and/or Financial Data*

17 35. Exhibits 12, 23, 38, 42, 45, 75, and 383 are expert reports served by
 18 Songkick on Defendants in this Action, that contain certain sensitive information
 19 regarding: (a) the relationship between Songkick and specific artists, (b) Songkick's
 20 forward-looking business strategy and business policies, (c) Songkick' strategic
 21 decision-making, (d) Songkick's trade secrets and the development and protection
 22 of those trade secrets, and (e) specific artists' communications and arrangements
 with Songkick.

23 **3. *Discovery Responses that Reflect Songkick's Strategy and***
 24 ***Business Policy, Trade Secrets and/or Financial Data***

25 36. Exhibits 6-8, 10-11, and 199 are discovery responses served by
 26 Songkick on Defendants in this Action, that contain certain sensitive regarding: (a)
 27 the relationship between Songkick and specific artists, (b) Songkick's forward-
 28 looking business strategy and business policies, (c) Songkick' strategic decision-

1 making, (d) Songkick's trade secrets and the development and protection of those
 2 trade secrets, and (e) specific artists' communications and arrangements with
 3 Songkick.

4 **4. *Deposition Excerpts***

5 37. Exhibits 15, 16, 18, 19, 387, 388, 391, 392, 394, 396, 399, 400, and 404
 6 are excerpts of the transcripts of Songkick's witnesses and expert witnesses, and
 7 from third-party witnesses, that contain certain sensitive and confidential
 8 information regarding: (a) the relationship between Songkick and specific artists, (b)
 9 Songkick's forward-looking business strategy and business policies, (c) Songkick'
 10 strategic decision-making, (d) Songkick's trade secrets and the development and
 11 protection of those trade secrets, (e) specific artists' communications and
 12 arrangements with Songkick, and (f) sensitive information regarding specific artists'
 13 and artists' managers' strategies and relationships in the music industry.

14 **C. *Declarations***

15 **1. *Declaration of Matt Jones***

16 38. Songkick seeks to seal the declaration of its CEO, Matt Jones, which
 17 reveals sensitive business strategy and information about Songkick's relationships
 18 with its artist clients. Mr. Jones' declaration also cites to or references Defendants'
 19 declarations which are filed under seal.

20 **2. *Declaration of Stephen Glick***

21 39. Songkick seeks to seal the declaration of its VP of Business
 22 Development, Stephen Glick, which reveals sensitive business strategy and
 23 information about Songkick's relationships with its artist clients. Mr. Glick's
 24 declaration also reveals sensitive information about how Songkick tracks its wins
 25 and losses internally and Songkick's business practices for doing so, which are
 26 competitively sensitive. Mr. Jones' declaration also cites or references Defendants'
 27 declarations which are filed under seal.
 28

1 **3. *Declaration of Jesse Bellin and Accompanying Exhibits***

2 40. Songkick seeks to seal the declaration and accompanying exhibits of its
3 VP of Artist Services, Jesse Bellin, which reveal sensitive business strategy and
4 information about Songkick's relationships with its artist clients. Ms. Bellin's
5 declaration also cites or references Defendants' declarations which are filed under
6 seal.

7 **4. *Declaration of Stu Smith***

8 41. Songkick seeks to seal the declaration of its former executive, Stu
9 Smith, which reveals sensitive business strategy from his time at Songkick and
10 information about Songkick's relationships with its artist clients who are also his
11 own longstanding clients in other contexts. Mr. Smith's declaration provides frank
12 discussion regarding his business relationships and implicates his longstanding
13 relationships in the music industry.

14 **5. *Artist Representative and Promoter Declarations***

15 42. Songkick seeks to seal the following declarations in their entirety: the
16 Declarations of Nicky Berger, Nick Blasko, Jason Foster, Caius Pawson, Jason
17 Colton, Michael Corcoran, Corinna Miller, Veikko Fuhrmann, Chris Guggenheim,
18 Rob Holden, Kathy Kane, Jerry Mickelson, Dawn Moses, John Paluska, Jonathan
19 Pardo, Dolphus Ramseur, Georges Sulmers, and Traci Thomas. For each of these
20 declarations, the declarant is either a third party artist representative or who
21 represents various third party artists or a promoter (regarding Mr. Sulmer) and/or a
22 venue manager. Songkick seeks to seal these declarations in their entirety not only
23 because each contains the names and certain sensitive information regarding non-
24 parties, but also because each contains sensitive information regarding: (a) the
25 relationship between the declarant's company and specific artists, (b) the
26 relationships between the declarant's company and other companies, including
27 Defendants, (c) strategic decision-making with respect to specific artists, (d) what
28 products and services certain artists prefer to use and why, and (e) specific artists'

1 communications and arrangements with Defendants and Songkick. In one instance,
2 an artist manager included in this group of declarants states she is concerned she
3 could face negative professional repercussions for speaking out in a declaration in
4 this Action. C. Miller Decl. ¶ 2. Given these concerns, Songkick believes sealing is
5 justified for each of these third-party declarations.

6 **6. *Expert Declarations and Exhibits Thereto***

7 43. The Declarations of Josh Baron, Kyle Cunningham, Joseph Farrell, and
8 David Yurkerwich relate to and attach thereto expert reports served by Songkick on
9 Defendants in this Action, that contain certain sensitive information regarding: (a)
10 the relationship between Songkick and specific artists, (b) Songkick's forward-
11 looking business strategy and business policies, (c) Songkick' strategic decision-
12 making, (d) Songkick's trade secrets and the development and protection of those
13 trade secrets, and (e) specific artists' communications and arrangements with
14 Songkick.

15 **D. Other Documents**

16 44. Portions of the Memorandum of Points and Authorities in Support of
17 Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment
18 reference or incorporate the materials discussed above. Plaintiff respectfully
19 requests that the Court permit partial redactions of that material for the same reasons
20 discussed above.

21 45. An unredacted version of the Statement of Genuine Disputes and
22 Additional Material Facts in Support of Plaintiff's Opposition to Defendants'
23 Motion for Partial Summary Judgment, which references or incorporates the
24
25
26
27
28

1 materials discussed above. Plaintiff respectfully requests that the Court permit
2 partial redactions of that material for the same reasons discussed above.¹

3 * * *

4 For the foregoing reasons, Plaintiff respectfully requests that the Court enter
5 an Order permitting the above-referenced documents to be filed under seal, provided
6 that redacted versions of these documents shall remain publicly accessible. A
7 Proposed Order granting this Application has been submitted herewith.

8
9 Dated: June 26, 2017

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

10 By: /s/ Frederick Lorig
11 Frederick A. Lorig

12 Attorneys for Plaintiff
13 COMPLETE ENTERTAINMENT
14 RESOURCES LLC
15
16
17
18
19
20
21
22

23 ¹ Plaintiff has filed the Statement of Genuine Disputes and Additional Material
24 Facts in Support of Plaintiff's Opposition to Defendants' Motion for Partial
25 Summary Judgment conditionally under seal because it contains Defendants'
26 "Confidential" or "Highly Confidential" information. Plaintiff does not know
27 whether Defendants will seek to redact this document or what portions Defendants
28 may ultimately seek to redact, however we have inserted redactions we believe may
be appropriate as well as our own requested redactions are identified by yellow
highlighting.